

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Griz Lee, LLC,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-77-1109
Parcel No. 241/00434-522-001

On June 10, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Griz Lee, LLC, was represented by Thomas Knapp, of Ruhl Commercial, West Des Moines, Iowa and submitted evidence in support of its appeal. The Board of Review was represented by Assistant County Attorney David Hibbard. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Griz Lee, LLC appeals from the Polk County Board of Review decision reassessing its property located at 6165 NW 86th Street, Johnston, Iowa. According to the property record card, the property consists of a two-story, commercial building with 40,552 square feet of finished area, built in 1998. The building has a good quality grade (3+00) and is in normal condition. The property includes a 5490 square-foot restaurant, 13,110 square feet of retail/office area, and a 21,952 square foot conference center, which does business as Foxboro Square Business Center. The property is also improved by 52,350 square feet of concrete paving and is situated on a 2.574-acre site.

The real estate was classified as commercial on the initial assessment of January 1, 2011, and valued at \$3,700,000, representing \$752,000 in land value and \$2,948,000 in improvement value.

Griz Lee protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2), and that there was a downward change in value under section 441.37(1)(b) and 441.35(2). It requested an assessed value of \$2,500,000. The Board of Review denied the petition.

Griz Lee appealed to this Board reasserting its claims and sought the same relief. In its Notice of Appeal & Petition to this Board, Griz Lee did not explicitly indicate it was continuing to pursue its downward change in value claim. We note, however, that a downward change in value claim under sections 441.35(2) and 441.37(1)(b) is not properly brought in a re-assessment year. Iowa Code §§ 441.35(2), 441.37(1)(b); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). Therefore, this Board did not consider the change in value ground.

Thomas Knapp testified on behalf of Griz Lee. Knapp reported the property,¹ along with others in the same complex, was acquired by Community Business Lenders, a consortium of small credit unions, in the original developer's bankruptcy proceeding. Ruhl Commercial was named receiver. Community Business Lenders then allocated the ownership of the various properties in the bankruptcy to its member credit unions based on their debt holdings. Consequently, no appraisal was needed to determine the fair market value of the property. For this reason, the transfer to Community Choice Credit Union, its present owner, for \$1,450,000 was not a normal, arm's length transaction and did not reflect market value.

Knapp explained the parcel included offices, a restaurant, and a business center. He reported the business center has maintained 70-83% occupancy. However, except for one dental office, the offices and restaurant have been vacant for two years. This results in approximately 45% vacancy rate while the market vacancy rate is approximately 10% to 15%. While Ruhl Commercial actively markets the property for sale or lease, no listing price is advertised because of its negative net

¹ The subject property was subdivided into two separate parcels in December 2012.

operating income (NOI). Knapp believes the negative cash flow reduces the potential for a sale. He has not received any offers on the property and does not believe anyone would purchase it for the assessed value of \$3,700,000. Although he estimated the subject property's a fair market value is \$2,500,000, he does not believe that amount is an achievable sale price. Nor did he provide any support for what he believes is the property's correct value.

Knapp believes the assessment should be reduced due to the prolonged above-market vacancy and the resulting negative NOI. He reported, in his experience, the Board of Review normally applied a formula to reduce assessments in similar cases in the past where a property's vacancy-rate exceeds double the market vacancy-rate. No evidence was introduced regarding this formula. However, we acknowledge a higher-than-market vacancy rate would typically be considered in developing an income approach to value. Since the Board of Review and Knapp were unable to obtain income and expense information from the owner and no income approach was developed in an appraisal or by either party, we are unable to adequately consider an adjustment based on vacancy.

There is evidence suggesting the subject property's prolonged, above-market vacancy and negative cash flow may have affected its fair market value. However, reviewing the record as a whole, we find the preponderance of the evidence does not establish that the subject property is assessed for more than authorized by law nor does it prove the actual fair market value of the property. We recommend the property owner reconsider providing the income and expense information previously requested by Knapp and the Board of Review or obtain an appraisal to establish the market value, so that these factors can be considered in the next reassessment.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply.

Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

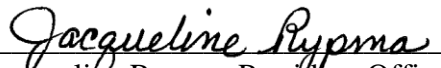
In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(a)(2). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

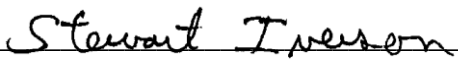
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Griz Lee did not provide evidence to support its claim of over-assessment as of the assessment date. The record lacked evidence of the fair market value of the subject property, such as recent comparable sales, an appraisal, or an income approach to valuation. As a result, we find the preponderance of the evidence fails to support Griz Lee's claim that its property was assessed for more than authorized by law as of January 1, 2011.

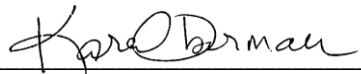
Therefore, we affirm Griz Lee's property assessment as determined by the Board of Review.

THE APPEAL BOARD ORDERS the property assessment of 6165 NW 86th Street, Johnston, Iowa is \$3,700,000, representing, \$752,000 in land value and \$2,948,000 in improvement value as of January 1, 2011, is affirmed.

Dated this 23rd day of July, 2013.


Jacqueline Rypma, Presiding Officer



Stewart Iverson, Board Chair


Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>July 23, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	